IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

THURSDAY, THE 27TH SEPTEMBER 2007 / 5TH ASWINA 1929

CRL.A.No. 599 of 2002(C)
---

CC.994/2000 of JUDL.MAGISTRATE OF FIRST CLASS-II, KOTTARAKKARA

.....

APPELLANT: COMPLAINANT:
---

P.RAMACHANDRA IYER,
`VINAYAK', PADINJATTINKARA, KOTTARAKARA,
KOLLAM DIST.

BY ADV. SRI.B.MOHANLAL

RESPONDENTS: ACCUSED & STATE:
---

1. M.J.AMIL,
MANIMANDIRAM (KUZHIYIL), MANADI P.O.,
ENATHU VILLAGE, ADOOR, PATHANAMTHITTA DIST.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

R2-BY P.P.SRI.PUZHAKKARA MOHAMMED

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 27/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**K. THANKAPPAN, JJ.**

---

**CRL.A.NO.599 OF 2007**

---

**Dated this the 27th day of September, 2007.**

**JUDGMENT**

Appellant is the complainant in C.C.No.994/2000 on the file of the Judicial Magistrate of First Class-II, Kottarakkara. By the impugned order, the trial court acquitted the 1st respondent/accused under Section 256(1) of the Code of Criminal Procedure. This Court admitted the appeal and notice has been served on the 1st respondent, but there is no appearance. Heard the learned counsel for the appellant.

2. After going through the arguments of the learned counsel and perusing the impugned order, this Court is of the view that the order impugned is not in accordance with the principles laid down by this Court in **Don Bosco v. Partech Computers Ltd.** (2005 (2) KLT 1003) & **G.F.S. Chit & Loans (P) Ltd. v. Rajesh** (2006 (3) KLT 825). In the above two cases, this Court had categorically held that the court should apply its judicial mind for passing an order under Section 256(1) of the Code. Apart from the above judgment, the Apex Court had held in **Associated Cement Co. Ltd. v.**

**Keshvanand** [1998 (1) KLT 179 (SC)] as follows:

> "17. Reading the section in its entirety would reveal that two constraints a re imposed on the court for exercising the power under the Section. First is, if the court thinks that in a situation it is proper to adjourn the hearing then the magistrate shall not acquit the accused. Second is, when the magistrate considers that personal attendance of the complainant is not necessary on that day the magistrate has the power to dispense with his attendance and proceed with the case. When the court notices that the complainant is absent on a particular day the court must consider whether personal attendance of the complainant is essential on that day for the progress of the case and also whether the situation does not justify the case being adjourned to another date due to any other reason. If the situation does not justify the case being adjourned the court is free to dismiss the complaint and acquit the accused. But if the presence of the complainant on that day was quite unnecessary then resorting to the step of axing down the complaint may not be a proper exercise of the power envisaged in the section. The discretion must therefore, be exercised judicially and fairly without impairing the cause of administration of criminal justice."

3. As per the principles laid down by this Court as well as the Apex Court, this Court is of the view that the order under challenge is liable to be set aside. Accordingly, the appeal is allowed. The order impugned is set aside and the matter is remanded back to the trial court for fresh disposal as per law. The appellant shall

appear before the court on 17.11.2007. On appearance of the appellant, the lower court shall issue fresh notice to the 1st respondent as there is no appearance before the court.

Ordered accordingly.

**K. THANKAPPAN, JUDGE.**

**cl**

**K. THANKAPPAN, J.**

**CRL.A.NO.599 OF 2002**

**JUDGMENT**

**27th September, 2007.**